

## **IC 33-38-10**

### **Chapter 10. Private Judges**

#### **IC 33-38-10-1**

##### **"Private judge" defined**

Sec. 1. As used in this chapter, "private judge" means a person who is qualified to act as judge of a case under this chapter.

*As added by P.L.98-2004, SEC.17.*

#### **IC 33-38-10-2**

##### **Persons who may act as private judge**

Sec. 2. (a) A person who:

- (1) has been but is not currently a judge of a circuit, superior, criminal, probate, municipal, or county court and has served in the capacity of judge for at least four (4) consecutive years;
- (2) is admitted to the practice of law in Indiana; and
- (3) is a resident of Indiana;

may act as judge for certain cases under this chapter.

(b) A person may act as a judge of a case under this chapter only if:

- (1) all parties to the action file a written petition with the executive director of the division of state court administration consenting to the case being heard by a private judge, and naming the person whom the parties wish to have as private judge;
- (2) the case is one over which the court in which the former judge served would have had subject matter and monetary jurisdiction;
- (3) the case is founded exclusively on contract, tort, or a combination of contract and tort; and
- (4) the case is one in which a utility (as defined in IC 8-1-2-1) is not a party.

*As added by P.L.98-2004, SEC.17.*

#### **IC 33-38-10-3**

##### **Registration of former judges; list; petition to have case heard by private judge; appointment**

Sec. 3. (a) A former judge qualified under section 2(a) of this chapter who wishes to serve as a private judge must register with the executive director of the division of state court administration. The executive director shall:

- (1) compile;
- (2) periodically update; and
- (3) make available to the public;

a list of registered former judges.

(b) If the parties to an action wish to have the action heard before a private judge, the parties shall submit to the executive director of the division of state court administration a written petition as described in section 2(b)(1) of this chapter. After verifying that the former judge is qualified under section 2(a) of this chapter and is

registered under subsection (a), the executive director shall forward the petition to the former judge named on the petition.

(c) The regular or presiding judge of the court in which the action is filed shall appoint the private judge to hear the action if the written petition of the parties to the action and the written consent of the private judge to hear the action is presented to the regular or presiding judge:

- (1) contemporaneously with the filing of the action; or
- (2) after the action has been filed.

*As added by P.L.98-2004, SEC.17.*

#### **IC 33-38-10-4**

##### **Conduct of trial without jury; powers of judge; records; applicability of rules of civil procedure; appeals**

Sec. 4. (a) A trial conducted by a private judge shall be conducted without a jury.

(b) A person who serves as a private judge has, for each case the private judge hears, the same powers as the judge of a circuit court in relation to:

- (1) court procedure;
- (2) deciding the outcome of the case;
- (3) attendance of witnesses;
- (4) punishment of contempts;
- (5) enforcement of orders;
- (6) administering oaths; and
- (7) giving all necessary certificates for the authentication of the records and proceedings.

(c) All proceedings in an action heard by a private judge are of record and must be:

- (1) filed with the clerk of the circuit court in the county of proper venue under the Indiana Rules of Trial Procedure; and
- (2) made available to the public in the same manner as circuit court records.

(d) The Indiana Rules of Trial Procedure apply for all actions brought before a private judge. An appeal from an action or a judgment of a private judge may be taken in the same manner as an appeal from the circuit court of the county where the case is filed.

*As added by P.L.98-2004, SEC.17.*

#### **IC 33-38-10-5**

##### **Costs**

Sec. 5. Costs in an action brought before a private judge shall be taxed and distributed in the same manner as costs in the circuit court of the county in which the case is filed.

*As added by P.L.98-2004, SEC.17.*

#### **IC 33-38-10-6**

##### **Clerk of court; sheriff; duties**

Sec. 6. (a) The clerk of the circuit court of the county in which the case is filed serves as the clerk of the court for a case heard by a

private judge, and the sheriff of that county serves as the sheriff of the court for the case. The clerk and the sheriff shall attend the proceedings and perform the same duties relating to their offices as are required for the circuit court of the county in which the case is filed.

(b) The clerk of the circuit court of the county in which the case is filed shall provide to a private judge for each case all books, dockets, papers, and printed blanks necessary to discharge the duties of the court.

*As added by P.L.98-2004, SEC.17.*

#### **IC 33-38-10-7**

##### **Time and place of hearing; notice of proceeding**

Sec. 7. (a) A case heard by a private judge may be heard:

- (1) at any time; and
- (2) at any place in Indiana;

that is mutually agreeable to all parties and the judge.

(b) There shall be posted in the office of the clerk of the circuit court of the county in which the case is filed, in a place accessible to the public, a notice of the date, time, and place of any proceeding, including:

- (1) a hearing on a motion for judgment by default;
- (2) a hearing for judgment on the pleadings;
- (3) a hearing for summary judgment; and
- (4) a trial upon the merits;

that could result in a judgment. The notice shall be posted at least three (3) days before the proceeding is conducted.

*As added by P.L.98-2004, SEC.17.*

#### **IC 33-38-10-8**

##### **Compensation and costs**

Sec. 8. Notwithstanding the rules of trial procedure, a private judge may receive compensation for hearing a case in an amount and subject to the terms and conditions agreed to by the judge and the parties to the case. A contract for the services of a private judge must provide for the payment of the judge's compensation by the parties. In addition, the contract must include terms and conditions relating to:

- (1) the compensation of all personnel; and
- (2) the costs of all facilities and materials;

as determined by the clerk of the court that are used in relation to the case and not otherwise covered.

*As added by P.L.98-2004, SEC.17.*

#### **IC 33-38-10-9**

##### **Adoption of rules by supreme court**

Sec. 9. The supreme court shall adopt rules to carry out this chapter.

*As added by P.L.98-2004, SEC.17.*